

STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Acting Administrator

January 11, 2011

Irwin Kushner
Herman Kushner Trust
294 Convention Center Drive
Las Vegas, NV 89109

Maryland Square Shopping Center, LLC
c/o Tim Swickard
Dongell Lawrence Finney LLP
770 L St., Suite 950
Sacramento, CA 95814

Subject: Draft Corrective Action Plan for Groundwater, Maryland Square Shopping Center

Facility: Al Phillips the Cleaner (former)
3661 S. Maryland Parkway
Las Vegas, NV

Facility ID: H-000086

Dear Mr. Kushner and Mr. Swickard:

The Nevada Division of Environmental Protection (NDEP) has reviewed the draft Corrective Action Plan (CAP) for Groundwater, prepared by Tetra Tech on behalf of the Herman Kushner Trust (Trust) and Maryland Square Shopping Center, LLC. (MSSC), and received electronically by the NDEP on October 12, 2010, and in hard copy on October 14, 2010. This letter provides the NDEP's comments on the CAP. In developing these comments, the NDEP has considered input provided by other parties to the NDEP, and, where determined appropriate by the NDEP, has included those comments in this letter.

The NDEP also received the draft CAP electronically, in Word format, so that the text could be reviewed directly in redline/strikeout mode.

General Comments

The NDEP finds that the draft CAP for Groundwater has major deficiencies that render the draft document unacceptable. The inadequacy of the document requires that the NDEP reject the draft CAP for Groundwater. Because the NDEP is rejecting the draft CAP, we have only provided draft comments for your consideration in developing a revised draft CAP. Although the NDEP has prepared written draft comments (Attachment 1) and provided draft redline markups and comments on the electronic version of the CAP (Attachment 2), **no formal response to these draft comments is requested.** Rather, the NDEP requests that you **review the draft comments to help guide the rewriting of the next draft CAP for Groundwater.** The NDEP has provided these comments to the administrative record for completeness. The categories of major deficiencies are as follows:

1. Evaluation of Existing Data. Overall, the document exhibits a lack of review and evaluation of the analytical data that are readily available for the site. By overlooking most of the available analytical data, some remedies that are very likely not viable have been proposed in the CAP, and other remedies that may likely be viable were excluded from recommendation, without explanation.
2. Work Plans. The draft CAP proposes to develop work plans for identifying “data gaps” and conducting pilot studies. However, the NDEP believes that the analysis of the available data and the identification of data gaps should have been included as a critical part of developing the draft CAP. This data evaluation is necessary for including and recommending remedies that are likely to be appropriate and viable for site groundwater.
3. Schedule. All available data must be evaluated in the Groundwater CAP to ensure that remedial options are properly evaluated, and to determine a reasonable schedule for necessary tasks and deliverables.
4. Remedy Recommendations. This entire section must be revised after a thorough evaluation of all data. Additional analysis is required to support a broader range of reasonable remedy options for evaluation. Viable remedies (e.g., pump and treat alone or in combination with other technologies) must not be eliminated at this time. Pilot tests and additional characterization of the area where the remedy will be installed will likely be required.
5. Corrective Action Objectives (CAOs) and Remediation Standards. These are too general in the current draft document. The CAP states that the MCL of 5 µg/L for groundwater is not applicable because “*naturally occurring groundwater quality is so poor...*” All waters of the state are potential sources of drinking water. According to Nevada State law, “waters of the state” are “*all waters situated wholly or partly within or bordering upon this State, including but not limited to: 1) all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems; and 2) all bodies or accumulations of water, surface and **underground**, natural or artificial.*” The State Environmental Commission (SEC) notes that “*the State has a policy to protect all groundwater to drinking water standards.*”

As for PCE in residential indoor air, the document confuses the NDEP’s interim-action level with a remediation standard. The NDEP’s interim-action level of 32 µg/m³ PCE in residential indoor air should not be taken as the remediation standard for indoor air. The CAO should use the U.S. EPA’s 1.0E-06 carcinogenic risk level as a point of departure. Furthermore, the remediation standard for PCE in groundwater should be the MCL or a level such that associated concentration of PCE in indoor air approaches a 1.0E-06 risk level.

Specific Comments


Detailed specific comments are provided in Attachment 1 to this letter.

NDEP Requirements

Please provide the revised draft CAP for Groundwater by **February 28, 2011**. If you have any questions or require additional information regarding this letter, contact me by telephone at (775) 687-9496 or e-mail at msiders@ndep.nv.gov.

Maryland Square Shopping Center, LLC
c/o Mr. Tim Swickard
H-000086
January 11, 2011
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Sincerely,



Mary A. Siders, Ph.D.
Bureau of Corrective Actions
Nevada Division of Environmental Protection
Fax (775) 687-8335

Enclosures (2)

Attachment 1 – Specific draft comments

Attachment 2 – Draft electronic redline of CAP text

ec: (w/enc)

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Todd Croft, Supervisor, BCA, NDEP, Las Vegas, NV

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cc: (w/enc, Attachment 1 - hard copy; Attachment 2 - electronic)

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